5355.

SUPREME COURT OF THE UNITED STATES.

No. 190.

JAMES O'HARA, PLFF. IN ER.,

vs.

RICHARD H. WINSLOW, JAMES F. D. LANIER, AND ISAAC KIPP, JR., PARTNERS DOING BUSINESS IN THE NAME OF WINSLOW, LANIER, & CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

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Among the records and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, in the third circuit, may be found the following words and figures, viz:

RICHARD H. WINSLOW, JAMES F. D. LANIER, and Isaac Kipp, jr., partners, doing business in the name of Winslow, Lanier & Company, citizens of the State of New York,
vs.
JAMES O'HARA, a citizen of the State of Pennsylvania.
} No. 1 of May term, 1858. Action on the case.

Be it remembered that heretofore, to wit, on the 21st day of November, 1857, comes the plaintiffs, by their attorney, James H. Hopkins, esq'r, and files the following precipe and affidavit of claim:

(Copy of precipe and affidavit of claim.)

U. S. CIRCUIT COURT.

RICHARD H. WINSLOW, JAMES F. D. LANIER, and Isaac Kipp, jr., partners, trading under the name of Winslow, Lanier & Co., citizens of the State of N. Y.,
vs.
JAMES O'HARA, a citizen of the State of Penn'a.
} No. term.

Issue summons; case returnable next return day.

JAMES H. HOPKINS.

To H. SPROAL, *Clk U. S. C. C.*

Copy of affidavit of claim.

STATE OF NEW YORK,
New York City, ss:

Before me, personally came J. F. D. Lanier, one of the plaintiffs above named, who being duly sworn, did depose and say that James O'Hara, of Pennsylvania, is justly indebted to the said plaintiffs, Winslow, Lanier & Co., of New York, in the sum of seven thousand dollars, with interest from October 1, 1857, which said sum remains due and unpaid.

J. F. D. LANIER.

Sworn and subscribed before me, this 13th day of November, 1857.

SAMUEL A. PHILLIPS,
[SEAL.] *Notary Public.*

Whereupon the following summons was issued, Nov'r 21, 1857.

Copy of Summons.

UNITED STATES,
Western District of Penn'a, sct.

The President of the United States, to the marshal of the western
[SEAL.] district of Pennsylvania, greeting:

We command you that you summon James O'Hara, a citizen of the State of Pennsylvania, late of your district, if he may be found therein, so that he be and appear before the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a sessions of the same court, to be holden at Pittsburgh, on the first Monday of December next, to answer to Richard H. Winslow, James F. D. Lanier, and Isaac Kepp, jr., partners, trading under the name of Winslow, Lanier & Co., citizens of the State of New York, in an action on the case; and have you then and there this writ.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this 21st day of November, A. D. 1857, and of the independence of the said United States the eighty-second.

H. SPROAL, *Clerk.*

Endorsement upon this writ.

I do hereby depute Bernard Dougherty to execute the within writ. Witness my hand and seal.

JAMES G. CAMPBELL, [SEAL.]
Marshal.

Served by copy personally on James O'Hara, Nov'r 23, 1857.

JAMES G. CAMPBELL,
U. S. Marshal.
By B. DOUGHERTY.

And afterwards, to wit, November 28th, 1857, comes the plaintiff, by *this* attorney, James H. Hopkins, esq'r, and files the following declaration:

Copy of Declaration.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

No. term, 185 .

James O'Hara, citizen of the State of Pennsylvania, was sum-

moned to answer Richard H. Winslow, James F. D. Lanier, and Isaac Kipp, jr., partners, doing business under the name of Winslow, Lanier & Co., citizens of the State of New York, of a plea of trespass on the case. Whereupon, the said plaintiffs, by James H. Hopkins, their attorney, complain, for that whereas James O'Hara, of Pennsylvania, on the 1st day of October, in the year of our Lord one thousand eight hundred and fifty-one, at Pittsburgh, to wit, at the district aforesaid, did make his certain promissory note in writing, and delivered the same to the said Winslow, Lanier & Co., citizens of the State of New York, and thereby promised to pay to Winslow, Lanier & Co. the sum of seven thousand dollars in five years after the date thereof, which period has now elapsed, and the said James O'Hara did not pay the amount thereof, although the same was presented to him on the day when it became due, of all which the defendant then and there had due notice; by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiffs the said sum of money in said note mentioned, and being so liable, he, the said defendant, on at the district aforesaid, did assume, and to the said plaintiffs did promise, the payment of the said sum of money in said note mentioned when he should be thereunto afterwards required. And whereas, also, said defendant, heretofore, to wit, on the fifth day of October, in the year of our Lord one thousand eight hundred and fifty-six, at Pittsburgh, in the district aforesaid, was indebted to the said plaintiffs in the sum of ten thousand dollars, for the price and value of goods, wares, and merchandise then and there sold and delivered by the plaintiffs to the defendant at his request:

And in the sum of ten thousand dollars for the price and value of work then and there done, and materials for the same provided by the plaintiffs for the defendant at his request:

And in the sum of ten thousand dollars, for money then and there lent and advanced to and paid, laid out, and expended, by the plaintiffs for the defendant at his request:

And in the sum of ten thousand dollars, for money then and there received by the defendant for the use of the plaintiffs:

And in the sum of ten thousand dollars, for money found to be due from the defendant to the plaintiffs on an account then and there stated between them:

And whereas, the defendant, afterwards, to wit, the day and year aforesaid, at the district aforesaid, in consideration of the premises, then and there promised to pay the said several sums of money, respectively, to the plaintiffs on request; yet hath disregarded his promises, and hath not paid any of the said moneys, or any part thereof, to the plaintiffs' damage twenty-five thousand dollars; and therefore they bring suit.

JAMES H. HOPKINS,
Att'y for Plaintiffs.

(Copy of note.)

$7,000. PITTSBURGH, *Oct'r* 1, 1851.

Five years after date I promise to pay Winslow, Lanier & Co. seven thousand dollars, with six per cent. interest, payable half yearly, principal and interest to be paid in the city of New York.

JAMES O'HARA.

And afterwards, to wit, on the 7th day of December, 1857, comes the defendant, by his attorney, and files the following affidavit of defence:

Copy of Affidavit of Defence.

CIRCUIT COURT OF U. S.

WINSLOW, LANIER, & CO., vs. JAMES O'HARA. } No. 1, May term, 1858.

STATE OF PENNSYLVANIA,
Western District, ss:

James O'Hara, the defendant above named, being duly sworn saith, that he has a good defence to the plaintiffs demand in this case, which consists in this, that the note sued upon in this case was given in part consideration for the purchase-money of a house and lot, in the city of Allegheny, which the said plaintiffs covenanted they had a perfect and indefeasible title to, subject to a certain mortgage, which title, so perfect and entire, as they held the same, with clause of warranty, and it was agreed should be conveyed to the said James O'Harra, yet the said plaintiffs have not nor did they convey the said title to this affiant so full and entire as they held the same, whereby the consideration thereof has failed; and until the said plaintiffs make the said title perfect, as they agreed to do, this affiant claims his defence thereto.

JAS. O'HARA.

Sworn to and subscribed before me, this 7th Dec., 1857.

H. SPROUL.
United States Com'r.

And afterwards, to wit, on the 8th day of December, 1857, the plaintiffs, by their counsel, asked and obtained the following rule:

(*Copy of Rule.*)

In the circuit court of the United States for the western district of Pennsylvania.

WINSLOW, LANIER, & Co., citizens of New York, vs. JAMES O'HARA, a citizen of Pennsylvania. } No. 1 of May term, 1858.

And now, to wit, December 8th, 1857, on motion of Mr. Hopkins, a rule is granted upon the def't to show cause why judgment should not be entered for want of a sufficient affidavit of defence.

Sec. reg., returnable on the first Monday of January next, at 10 o'clock a. m. From the record.

H. SPROUL, *Clk.*

And afterwards, to wit, January 4th, 1858, the rule of the 8th ultimo came on to be heard, and the court direct the clerk to enter judgment nisi to be absolute, unless the defendant or his attorney, on or before the next return day, file a sufficient affidavit of defence.

And afterwards, to wit, on January 13th, 1858, the defendant, by his attorney, files the following supplemental affidavit of defence:

(*Copy of Supplemental Affidavit of Defence.*)

CIRCUIT COURT U. S.

WINSLOW, LANIER, & Co., vs. JAMES O'HARA. } No.

James O'Hara, being duly sworn, saith that the ground of defence on this action consists in the fact that Mrs. Winslow, the wife of one of the plaintiffs, did not join in the deed, and the note sued upon was made so as not to be negotiable for the express purpose of securing this deponant against any defects in the title, he having made no examination thereof previous to the giving of said note, and this deponent for that reason refused to give a negotiable note, although he was requested to do so; and further saith not.

JAS. O'HARA.

Sworn to and subscribed, this 11th January, 1858.

THOS. STEEL, *Ald.*

And afterwards, to wit, on the 29th day of January, 1858, the rule in this case came on to be heard upon the affidavit and supple-

mental affidavit filed, and the court being fully advised in the premises discharged the rule, the supplemental affidavit being considered sufficient.

And afterwards, to wit, February 1st, 1858, the plaintiff, by his attorney, J. H. Hopkins, obtained the following rule:

(*Copy of Rule.*)

In the circuit court of the United States for the western district of Pennsylvania.

WINSLOW, LANIER, & Co., vs. JAMES O'HARA. } No. 1 of May term, 1858.

And now, to wit, February 1st, 1858. Rule to plead in one month or judgment. From the record.

[SEAL.] H. SPROUL, *Clerk.*

Endorsement upon rule, "served by copy on George S. Selden, Esq., attorney for defendant, February 1st, 1858."

And afterwards, to wit, March 1st, 1858, the defendant, by his attorneys, Selden & Burgwin, comes and files the following pleas:

(*Copy of Pleas.*)

In the circuit court of the United States for the western district of Pennsylvania.

JAMES O'HARA advs. RICHARD H. WINSLOW, JAMES F. D. LANIER, ISAAC KIPP, jr., doing business under the name of Winslow, Lanier, & Co. } No. 1 of May term, 1858.

And the said defendant, by Selden & Burgwin, his attorneys, comes and defends the wrong and injury, when, &c., and says that the said plaintiff ought not to have or maintain their aforesaid action thereof against the said defendant, because he says that the note upon which this suit was brought was given by defendant to plffs. for the purchase-money of a certain tract of land by him from them, and that at the time said note was given, and conveyance made, it was agreed between the parties, that the defendant should withhold payment of said note until he should receive from said plaintiffs a good and sufficient release from the wives of said plaintiffs of all right of dower they might have in the premises respectively, and the said defendant avers that no such releases have been yet delivered to him as aforesaid, but that all right of dower inchoate

is still outstanding and substituting in wife of Richard H. Winslow, one of the plaintiffs; and this the said defendant is ready to verify, wherefore he prays judgment whether the said plaintiffs ought to maintain their aforesaid action thereof against him.

And for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according to the statute in such case made and provided, saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him; and of this he puts himself upon the country, &c.

SELDEN & BURGWIN, *Defts. Atty.*

And afterwards, to wit, on March 13th, 1858, the plaintiff, by his attorney, comes and files the following replication:

(*Copy of Replication.*)

In the circuit court of the United States for the western district of Pennsylvania.

WINSLOW, LANIER, & Co.
vs.
JAMES O'HARA. } No. 1 May term, 1858.

And the said plaintiffs as to the said plea of the said defendant, by him first above pleaded, comes and says, that protesting all and singular the matters and things in said defendant's plea alleged, are not true; and that said plaintiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action against him, the said defendant, and this they, the said plaintiffs, pray may be enquired of by the country, &c.

And the said plaintiffs, as to the plea of said defendant by him second above pleaded, and whereof he hath put himself upon the country, do the like.

JAMES H. HOPKINS, *Atty. for Plffs.*

March 10th, 1858.

And afterwards, to wit, on March 17th, 1858, the defendant, by his attorneys, comes and files the following additional pleas:

(*Copy of Additional Pleas.*)

In the circuit court of the United States for the western district of Pennsylvania.

WINSLOW, LANIER, & Co.
vs.
JAMES O'HARA. }

And now, to wit, March 11th, 1858, the above-named defendant,

by Selden & Burgwin, his attorneys, comes into court, and, by leave of the court first had and obtained, puts in an additional plea, and for such additional and further pleas says that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that the promissory note upon which this action is brought was given for a part of the purchase-money of a certain lot of ground in the city of Allegheny, which was conveyed to the defendant by the above-named Richard H. Winslow, James F. D. Lanier, and Mary M., his wife, and Isaac Kipp, jr., and Winnifred, his wife, in and by their deed of indenture bearing date the 30th day of September, A. D. 1851, which said indenture, sealed with the seals of the said parties, the defendant now brings here into court, the date whereof is the day and year aforesaid; and the said plaintiffs did, by the said indenture, covenant and agree to and with the defendant, amongst other things, in manner following—that is to say, that at the delivery of the said indenture, they were the lawful owners of the premises therein granted and seized, of a good and indefeasible estate of inheritance, clear of all incumbrances, subject, however, to a certain mortgage therein specified; and the said defendant says that, in fact, the said plaintiffs, at the delivery of the said indenture, were not the lawful owners of the premises therein granted and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrances, subject to the mortgage aforesaid; but on the contrary thereof, at the time of the delivery of the said deed of indenture, the wife of Richard H. Winslow, one of the plaintiffs, was and still is alive, and had and still has a just and legal claim and inchoate right of dower in and to the said premises.

And this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain his aforesaid action thereof against him.

And for a further plea in this behalf, the said defendant, by like leave, says that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says that the promissory note upon which this action is brought was given for a part of the purchase-money of a certain lot of ground in the city of Allegheny, which was conveyed to the defendant by the above-named Richard H. Winslow, James F. D. Lanier, and Mary M., his wife, and Isaac Kipp, jr., and Winnifred, his wife, in and by their deed of indenture bearing date the 30th day of September, 1851, which said indenture, sealed with the seals of the said parties, the defendant now brings here into court, the sale whereof is the day and year aforesaid; and the said plaintiffs did, by the said indenture, covenant and agree to and with the defendant, amongst other things, in manner following—that is to say: that at the delivery of the said indenture, they were the lawful owners of the premises therein granted, and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrances, subject,

however, to a certain mortgage therein specified; and the said defendant says, that in fact the said plaintiffs, at the delivery of the said indenture, were not the lawful owners of the premises therein granted and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrances, subject to the mortgage aforesaid.

And this the said defendant is ready to verify, wherefore he prays judgment if the said plaintiffs ought to have and maintain their aforesaid action thereof against him.

And for a further plea in this behalf, the said defendant, by like leave, says, that the plaintiffs ought not to have and maintain their aforesaid action thereof against him, because he says, that the said plaintiffs, before and at the time of the commencement of this suit, to wit, at the place aforesaid, were and still are indebted to the said defendant in a large sum of money, to wit, the sum of seven thousand dollars, for that the plaintiffs, Richard H. Winslow, James F. D. Lanier, and Mary, his wife, and Isaac Kipp, jr., and Winnifred, his wife, in and by their deed of indenture bearing date the 3d day of September, 1851, which said indenture, sealed with the seals of the said parties, the defendant now brings here into court, the date whereof is the day and year aforesaid, did, for and in consideration of the sum of twelve thousand dollars, sell and convey to the said defendant a certain lot of land in Alleghany city, more fully described in said indenture. And the said plaintiffs did, by the said indenture, covenant and agree to and with the said defendant amongst other things in manner following—that is to say, that, at the delivery of the said indenture, they were the lawful owners of the premises therein granted and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrances, subject, however, to a certain mortgage therein specified. And the said defendant says, that in fact the said plaintiffs, at the time of the delivery of the said indenture, were not the lawful owners of the premises therein granted and seized of a good and indefeasible estate of inheritance therein, clear of all incumbrances, subject to the mortgage aforesaid. And the said defendant further says, that the promissory note upon which this suit was brought was given by defendant to plaintiffs for payment of a part of the consideration or purchase-money of said lot of land. Wherefore, the defendant has suffered damages to the full amount of seven thousand dollars, the sum aforesaid, by reason of the aforesaid breach of the plaintiffs' covenant, as contained in the deed aforesaid. Which said sum of money, so due and owing to the said defendant as aforesaid, exceeds the damages sustained by the said plaintiffs, by reason of the non-performance by the said defendant of the said several supposed promises and undertakings in the said declaration mentioned, and out of which sum of money, so due and owing from the said plaintiffs to the said defendant, the said defendant is ready and willing and hereby offers to set off and allow to the said plaintiffs the full

amount of the said damages, according to the form of the statute in such case made and provided.

And this the said defendant is ready to verify, wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him.

SELDEN & BURQUIN,
Defendant's Attorney.

And afterwards, to wit, April 5th, 1858, the following replication to the additional pleas was filed:

(Copy of replication to add'l pleas.)

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

WINSLOW, LANIER & Co.
vs.
JAMES O'HARA. } No. 1, of May term, 1858.

And the said plaintiffs as to the said additional plea of the said defendant first above pleaded, comes and says that, protesting all and singular the matters and things in said defendant's plea alleged, are not true, and that said plaintiffs, by reason of anything by the said defendant in that plea adjudged ought not to be barred from having and maintaining their aforesaid action against him, the said defendant; and this, they, the said plaintiffs pray may be enquired of by the country.

And the said plaintiffs, as to the said additional plea of the said defendant second above pleaded, come and say, that protesting all and singular the matters and things in said defendant's plea alleged are not true, and that said plaintiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action against him, the said defendant, and this they, the said plaintiffs, pray may be inquired of by the country.

And the said plaintiffs, as to the said additional plea of the said defendant third above pleaded, come and say, that protesting all and singular the matters and things in said defendant's plea alleged are not true, and that said plantiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action against him, the said defendant, and this they, the said plaintiffs, pray may be inquired of by the country.

JAMES H. HOPKINS,
Attorney for Plaintiffs.

Same day the court made the following orders:

And now, to wit, April 5th, 1858, it is hereby ordered that the additional pleas of the defendant in the above case be marked as

filed on the 17th of March, 1858, without prejudice to the plaintiffs' right of trial at May term next. And it is further ordered, that a rule issue on defendant to rejoin instanter to the replications of plaintiffs, filed March 13th, 1858, and April 5th, 1858. Same day the following demurrer was filed:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

JAMES O'HARA
advs.
WINSLOW, LANIER & Co. } No. 1 of May term, 1858.

And the said defendant saith, that the replication of the said plaintiffs to the said first plea of the said defendant and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against him, and that he, the said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him. And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer in law to the said replication, that is to say, for that the said replication does not traverse or put in issue the allegations of said defendant in his said plea set forth; and also for that no certain and sufficient issue can be taken thereon; and that it is also in other respects defective, &c.

And the said defendant doth hereby strike out and withdraw the second plea by him above pleaded.

And the said defendant, as to the said replication of the said plaintiffs to the said first additional plea of the said defendant, and which the said plaintiffs have prayed may be inquired of by the country, doth the like.

And the said defendant, as to the said replication of the said plaintiffs to the said second additional plea of the said defendant, and which the said plaintiffs have prayed may be inquired of by the country, doth the like.

And the said defendant saith, that the replication of the said plaintiffs to the said third additional plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against him, and that he, the said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify; wherefore, by reason of the insufficiency of the said replication in

this behalf, the said defendant prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him.

And afterwards, to wit, April 15th, 1858, the following joinder in demurrer was filed:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

WINSLOW, LANIER, & Co.
vs.
JAMES O'HARA.
} No. 1 of May term, 1858.

And the said plaintiffs, as to their replication to the first plea of the said defendant, say that the said replication is sufficient in law.

And said plaintiffs object and protest against said defendant's right to withdraw his, said defendants, second plea, upon which issue has been joined.

And the said plaintiffs, as to their replication to the third additional plea of the said defendant, say that the said replication is sufficient in law.

JAMES H. HOPKINS,
Attorney for Plaintiffs.

April 15th, 1858.

And now, to wit, May 11th, 1858, the parties in this cause being at issue, a jury being called, come, viz: Robert J. Brinller, John Long, Peter Clover, John Freeman, Joseph Kerr, James Hughes, Matthew Lynn, Robert Wray, Robert Morrow, Alexander M. Grier, John Sile, and James A. Gibson, twelve good and lawful men, who having been duly summoned, returned, balloted for, empaneled, and sworn, do say they find for the plaintiff the sum of seven thousand two hundred and fifty-six dollars and sixty-six and one-third cents debt and costs of suit.

And afterwards, to wit, May 18th, 1858, the court direct the following to be entered of record:

It having satisfactorily appeared to the court that the order made at its session, of the 11th May last, for the withdrawal of the replication answered by demurrers was not then understood upon motion of the plaintiffs' counsel, but on the contrary that he desired, as has since been suggested, that they should remain on the record, and that therefore said order was erroneous, it is now ordered that the said order be rescinded, and that the said replications be reinstated. And it is further ordered that the demurrers referred to be set down for hearing, on the first Monday of June next, and that notice thereof be given to the parties or their attorneys.

And afterwards, to wit, on the 17th day of August, 1858, the court direct the following order to be entered:

And now, August 17th, 1858, the reserved question is adjudged

in favor of the plaintiffs, and on motion, judgment is hereby directed to be entered in favour of the plaintiffs upon the verdict for seven thousand three hundred and seventy-two $\frac{75}{100}$ dollars and costs.

And now also judgment is directed to be entered in favor of plffs. upon the demurrers to the replications which remained undisposed of at the trial. By the court.

H. SPROUL, *Clerk.*

And afterwards, to wit, August 27th, 1858, at the instance of defendant's counsel, the following writ of error was allowed by the court:

Copy of Writ of Error.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Western District of Pennsylvania.

RICHARD H. WINSLOW, JAMES F. D. LANIER, and Isaac Kipp, jr., partners, doing business in the name of Winslow, Lanier & Company, citizens of the State of New York,
vs.
JAMES O'HARA, a citizen of the State of Penna.

No. 1 of May term, 1858. Action on the case.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United State for the western district of Pennsylvania.

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you, between Winslow, Lanier, & Co., plaintiffs, and James O'Hara, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and fairly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may correct that error, and do what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this [SEAL.] 27th day of August, A. D. 1858, and of the independence of the United States the eighty-third.

H. SPROUL, *Clerk.*

I, Thomas Juven, one of the judges of the circuit court of the United States in and for the western district of Penn'a, in the third circuit, having approved the bond of James O'Hara, William M. Darlington, and Silas Fowler, as sufficient for the amount thereof, do allow this writ of error.

THO'S JUVEN,
D't Judge.

Whereupon, the following citation was issued and served.

Copy of Citation.

UNITED STATES OF AMERICA,
Western District of Penn'a, ss:

The President of the United States, to the marshal of the western district of Pennsylvania, greeting:

Whereas, James O'Hara has, this 27th day of August, A. D. 1858, sued out his writ of error to a certain judgment in a certain action, recovered against him on the seventeenth day of August, A. D. 1858, in the circuit of the United States for the western district of Pennsylvania, in the third circuit, by Richard H. Winslow, James F. D. Lanier, and Isaac Kipp, jr., partners, in the name of Winslow, Lanier & Co., plaintiffs, returnable in the Supreme Court of the United States, on the first Monday of December next:

This is to command you, that you make known to the said Winslow, Lanier & Co., that they be and appear to the said writ of error in the said Supreme Court of the United States, on the first day of the next term thereof; and hereof fail not at your peril.

And how you shall have executed this writ of citation, make return to our clerk of our said court for the western district of Pennsylvania, at Pittsburgh, on the rule day of said court for the month of September next.

Witness the honorable Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, at Pittsburgh, this 27th day of August, A. D. 1858.

H. SPROUL,
Clerk.

Endorsement upon this citation: August 27th, 1858. Served personally by copy on James H. Hopkins, esq'r, att'y for plaintiffs. So answers James G. Campbell, U. S. marshal.

UNITED STATES OF AMERICA,
Western District of Penn'a, sct.:

I, Henry Sproul, clerk of the circuit court of the United States for the western district of Pennsylvania, do hereby certify, that the foregoing is a true exemplification, the record and proceedings in the foregoing case, as the same remains on file and of record in this office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Pittsburgh, this [SEAL.] seventh day of January, A. D. 1858, and of the independence of the United States the eighty-third.

H. SPROUL,
Clerk.